

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CYNTHIA RUSSO, LISA BULLARD,
RICARDO GONZALES, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 38 HEALTH AND
WELFARE FUND, INTERNATIONAL
UNION OF OPERATING ENGINEERS
LOCAL 295-295C WELFARE FUND, AND
STEAMFITTERS FUND LOCAL 439, on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

WALGREEN CO.,

Defendant.

Civil No. 17-cv-2246

Judge Edmond E. Chang
Magistrate Judge Sheila Finnegan

**DECLARATION OF MICHAEL S. LEIB
IN SUPPORT OF DEFENDANT
WALGREEN CO.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

I, Michael S. Leib, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at the law firm of Reed Smith LLP and am admitted to practice before this Court. I submit this Declaration in support of Defendant Walgreen Co.’s (“Walgreens”) Opposition to Plaintiffs’ Motion for Class Certification. I have personal knowledge of the facts set forth herein and could testify competently to them if called to do so.

2. Attached as **Exhibit 1** is a true and correct copy of the March 17, 2023 Expert Report of Jed Smith.

3. Attached as **Exhibit 2** is a true and correct copy of the March 16, 2023 Expert Report of Michael S. Jacobs.

4. Attached as **Exhibit 3** is a true and correct copy of the April 13, 2020 Declaration of Edward Fox, submitted in his capacity as the Fund Administrator for Plaintiff International Brotherhood of Electrical Workers Local 38 Health and Welfare Fund (“IBEW”).

5. Attached as **Exhibit 4** is a true and correct copy of a document produced by Plaintiffs’ expert, Kenneth Schafermeyer, Ph.D., from Cynthia Tudor, Ph.D., Director, Medicare Drug Benefit Group, Department of Health & Human Services, Centers for Medicare & Medicaid Services, dated October 11, 2006, Bates stamped SCHAFERMEYER_0000395-SCHAFERMEYER_0000396.

6. Attached as **Exhibit 5** is a true and correct copy of a document produced by Walgreens, titled Prescription Savings Club, FY09 Interim Marketing Strategy, Bates stamped Walg_Forth_00005266-Walg_Forth_00005277.

7. Attached as **Exhibit 6** is a true and correct copy of the March 15, 2023 Declaration of Henry Thompson, Senior Director and General Manager of Consumer-Paid Prescriptions for Walgreens.

8. Attached as **Exhibit 7** is a true and correct copy of excerpts from the September 17, 2020 deposition of Brian Correia, testifying as Caremark, LLC's corporate designee.

9. Attached as **Exhibit 8** is a true and correct copy of excerpts from the December 19, 2019 deposition of David Halter, Jr., testifying as MedImpact Healthcare Systems, Inc.'s corporate designee.

10. Attached has **Exhibit 9** is a true and correct copy of excerpts from the September 30, 2020 deposition of Christy Piti, testifying as Sav-Rx Prescription Services's corporate designee.

11. Attached as **Exhibit 10** is a true and correct copy of excerpts from the January 21, 2021 deposition of James Johnson, testifying as OptumRx, Inc.'s corporate designee.

12. Attached as **Exhibit 11** is a true and correct copy of excerpts from the August 18, 2020 deposition of Wendy Barnes, testifying as Express Scripts, Inc.'s corporate designee.

13. Attached as **Exhibit 12** is a true and correct copy of excerpts from the June 15, 2020 deposition of David Schroff, testifying as the corporate designee of CastiaRx (f/k/a Leehar Distributors, Inc. d/b/a LDI Integrated Pharmacy Services).

14. Attached as **Exhibit 13** is a true and correct copy of excerpts from the November 20, 2019 deposition of Michael Amiet, testifying as Walgreens' corporate designee.

15. Attached as **Exhibit 14** is a true and correct copy of a document produced by third-party CVS Caremark titled Troubleshooting Set Price Generic Programs, Bates stamped CAREMARK_FORTH-000249-CAREMARK_FORTH-000250.

16. Attached as **Exhibit 15** is a true and correct copy of correspondence from Michael S. Leib, Walgreens' counsel, to counsel for Plaintiffs, dated December 1, 2022.

17. Attached as **Exhibit 16** is a true and correct copy of excerpts from the February 26, 2019 deposition of Cynthia Russo.

18. Attached as **Exhibit 17** is a true and correct copy of Plaintiffs' February 3, 2023 Production Letter accompanying the production of data from Plaintiffs' expert, Lynette Hilton.

19. Attached as **Exhibit 18** is a true and correct copy of Plaintiffs' Third Amended Responses and Objections to Walgreens' Third Set of Interrogatories.

20. Attached as **Exhibit 19** is a true and correct copy of a document produced by Plaintiffs, which Plaintiffs represented to be a list of all of Plaintiffs' claimed overpayments for the Individual Plaintiffs, Bates stamped HILTON_0000132.

21. Attached as **Exhibit 20** is a true and correct copy of a redacted copy of excerpts from the August 18, 2022 hearing transcript of Kenneth Schafermeyer in the matter of *Humana et al. v. Walgreen Co.*, AAA Case No. 01-19-0002-5131 produced by Walgreens in this matter, Bates stamped Walg_Forth_00358734-Walg_Forth_00358830.

22. Attached as **Exhibit 21** is a true and correct copy of excerpts from the May 7, 2019 deposition of Edward Fox, testifying as IBEW's corporate designee.

23. Attached as **Exhibit 22** is a true and correct copy of excerpts from the May 9, 2019 deposition of John P. Catalano, testifying as IUOE's corporate designee.

24. Attached as **Exhibit 23** is a true and correct copy of excerpts from the June 11, 2019 deposition of Charles Bailey, testifying as Steamfitters' corporate designee.

25. Attached as **Exhibit 24** is a true and correct copy of the March 17, 2023 Expert Report of James Hughes, Ph.D.

26. Attached as **Exhibit 25** is a true and correct copy of a document produced by Express Scripts, titled Network Provider Manual and dated 2008, Bates stamped ESI-0000582-ESI-0000704.

27. Attached as **Exhibit 26** is a true and correct copy of a document produced by Express Scripts, titled Network Provider Manual and dated 2010, Bates stamped ESI-0000127-ESI-0000322.

28. Attached as **Exhibit 27** is a true and correct copy of a document produced by Express Scripts titled Network Provider Manual and dated 2016, Bates stamped ESI-0000323-ESI-0000581.

29. Attached as **Exhibit 28** is a true and correct copy of a redacted copy of the July 1, 1999 Sav Rx Pharmacy Provider Agreement between Sav-Rx and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00148167-Walg_Forth_00148180.

30. Attached as **Exhibit 29** is a true and correct copy of a redacted copy of the November 20, 2000 Prescription Drug Services Agreement between PacifiCare Pharmacy Centers, Inc. (acquired by OptumRx, Inc.) and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00051530_R-Walg_Forth_00051544_R.

31. Attached as **Exhibit 30** is a true and correct copy the April 8, 1994 Pharmacy Network Agreement between PAID Prescriptions, Inc. (acquired by Medco) and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00110245-Walg_Forth_00110251.

32. Attached as **Exhibit 31** is a true and correct copy of a document titled 2019 MedCare Pharmacy Networks Policies and Procedures Manual (Also known as the Provider Manual).

33. Attached as **Exhibit 32** is a true and correct copy of the July 19, 2012 Express Scripts, Inc. Pharmacy Provider Agreement between Express Scripts, Inc. and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00095271-Walg_Forth_00095294.

34. Attached as **Exhibit 33** is a true and correct copy of the October 1, 2017 Seventy-Ninth Amendment to the Express Scripts, Inc. Pharmacy Provider Agreement between Express Scripts, Inc. and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00180170-Walg_Forth_00180188.

35. Attached as **Exhibit 34** is a true and correct copy of excerpts from the August 21, 2019 deposition of Erica Reaves.

36. Attached as **Exhibit 35** is a true and correct copy of the January 3, 2001 PCS Health Systems, Inc. (acquired by Caremark, LLC) Provider Agreement between PCS and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00320833-Walg_Forth_00320851.

37. Attached as **Exhibit 36** is a true and correct copy of the January 1, 2016 Caremark Provider Agreement between Caremark LLC and CaremarkPCS, LLC and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00102467-Walg_Forth_00102482.

38. Attached as **Exhibit 37** is a true and correct copy of a redacted copy of the January 1, 2015 Network Enrollment Form, FEP Retail Network between Caremark LLC and CaremarkPCS, LLC and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00101217-Walg_Forth_00101220.

39. Attached as **Exhibit 38** is a true and correct copy of redacted copy of the January 1, 2018 Caremark Provider Agreement between Caremark LLC and CaremarkPCS, LLC and

Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00074709-Walg_Forth_00074914.

40. Attached as **Exhibit 39** is a true and correct copy of a redacted copy of the January 1, 2017 Pharmacy Network Agreement between OptumRx, Inc. and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00053004- Walg_Forth_00053169.

41. Attached as **Exhibit 40** is a true and correct copy of a redacted copy of the June 1, 2011 Pharmacy Services Agreement between MedTrak Services, Inc. and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00139947-Walg_Forth_00139985.

42. Attached as **Exhibit 41** is a true and correct copy of the November 2010 LDI Integrated Pharmacy Services Pharmacy Provider Agreement between Leehar Distributors, Inc. d/b/a LDI Integrated Pharmacy Services and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00142496-Walg_Forth_00142523.

43. Attached as **Exhibit 42** is a true and correct copy of a redacted copy of the August 1, 2010 Provider Agreement between Sav-Rx Prescription Service and Walgreens, which was produced by Walgreens, Bates stamped Walg_Forth_00144213-Walg_Forth_00144244.

44. Attached as **Exhibit 43** is a true and correct copy of a redacted copy of the October 1, 2010 MedCare Pharmacy Network Agreement between MedImpact Healthcare Systems, Inc. and Walgreens, which was produced by MedImpact, Bates stamped MI-F_00004169-MI-F_00004215.

45. Attached as **Exhibit 44** is a true and correct copy of a redacted copy of the January 1, 2016 MedCare Pharmacy Network Agreement between MedImpact Healthcare Systems, Inc. and Walgreens, which was produced by MedImpact, Bates stamped MI-F_00003043-MI-F_00003200.

46. Attached as **Exhibit 45**, is a true and correct copy of a document produced by Steamfitters titled Service Agreement between Steamfitters and MedTrak Services LLC and dated January 1, 2008, Bates stamped LOCAL439_0001792-LOCAL439_0001805.

47. Attached as **Exhibit 46** is a true and correct copy of a document produced by Steamfitters, titled between Leehar Distributors, Inc. d/b/a LDI Integrated Pharmacy Services and Steamfitters dated January 1, 2014, Bates stamped LOCAL439_0001815- LOCAL439_0001886.

48. Attached as **Exhibit 47** is a true and correct copy of a document produced by Steamfitters titled Pharmacy Benefit Management Agreement between Leehar Distributors, LLC d/b/a CastiaRx dated January 1, 2019, Bates stamped LOCAL439_0002146- LOCAL439_0002163.

49. Attached as **Exhibit 48**, is a true and correct copy of excerpts from the January 17, 2023 deposition of Lynette Hilton.

50. Attached as **Exhibit 49** is a true and correct copy of Plaintiffs' Second Amended Responses and Objections to Walgreens' Second Set of Interrogatories.

51. Attached as **Exhibit 50**, is a true and correct copy of excerpts from the February 12, 2019 deposition of Ricardo Gonzales.

52. Attached as **Exhibit 51** is a true and correct copy of excerpts from the February 7, 2019 deposition of Lisa Bullard.

53. Attached as **Exhibit 52** is a true and correct copy of a document produced by IBEW titled Exhibit I-B, Form of Addendum effective as of October 1, 2014, Bates stamped IBEW_0017688-IBEW_0017689.

54. Attached as **Exhibit 53**, is a true and correct copy of the November 11, 2020 Supplemental Declaration of Edward Fox, testifying on behalf of IBEW.

55. Attached as **Exhibit 54** is a true and correct copy of a document produced by Steamfitters dated June 20, 2018 from Lisa Suenicht of J.W. Terrill, with an attachment entitled "Steamfitters Local 439 Health and Welfare Plan, Summary of Material Modifications," Bates stamped LOCAL439_0000384-LOCAL439_0000393.

56. Attached as **Exhibit 55** is a true and correct copy of the December 3, 2020 Declaration of Kathleen Jaegers, in her capacity as an Account Executive for J.W. Terrill, a consultant for Steamfitters.

57. Attached as **Exhibit 56** is a true and correct copy of a document produced by IBEW titled Sav-Rx Advantage Card, Bates stamped IBEW_0000652.

58. Attached as **Exhibit 57** is a true and correct copy of a document printed from the Sav-Rx website, www.savrx.com, titled Sav-Rx Advantage Discount Card Program, introduced as Exhibit 380 at the deposition of Christy Piti.

59. Attached as **Exhibit 58** is a true and correct copy of a document printed from the Sav-Rx website, www.savrx.com, titled Sav-Rx Advantage Discount Card Program, introduced as Exhibit 381 at the deposition of Christy Piti.

60. Attached as **Exhibit 59** is a true and correct copy of a document printed from the Sav-Rx website, www.savrx.com, titled Sav-Rx Prescription Services, introduced as Exhibit 382 at the deposition of Christy Piti.

61. Attached as **Exhibit 60** is a true and correct copy of a document produced by IBEW, from Walter O'Malley dated March 2, 2010, Bates stamped IBEW_0001152.

62. Attached as **Exhibit 61** is a true and correct copy of the March 17, 2023 Expert Report of Kelly Nordby, Ph.D.

63. Attached as **Exhibit 62** is a true and correct copy of the December 2, 2020 Declaration of Eileen Mallow, testifying on behalf of the University of Wisconsin in her capacity as the Director of the Office of Strategic Health Policy at the Department of Employee Trust Funds.

64. Attached as **Exhibit 63** is a true and correct copy of a document produced by the University of Wisconsin titled Contract by Authorized Board, which is between the State of Wisconsin, Department of Employee Trust Funds and Navitus Health Solutions, LLC, Bates stamped UWisconsin_000573-UWisconsin_000574.

65. Attached as **Exhibit 64** is a true and correct copy of the December 10, 2020 Declaration of Richard Valerio, testifying on behalf of New Mexico Public Schools Insurance Authority in his capacity as the Executive Director.

66. Attached as **Exhibit 65** are true and correct copies of documents produced by Ricardo Gonzales titled Walgreens Invoice and Receipt, Bates stamped GONZALES_0001215, GONZALES_1224, GONZALES_0001233, and GONZALES_0001300.

Executed on this 17th day of March, 2023, in New York, New York.

/s/ Michael S. Leib
Michael S. Leib

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

s/ Michael S. Leib
Michael S. Leib